

Government of West Bengal
Labour Department, I. R. Branch
N. S. Building, 12th Floor, 1, K. S. Roy Road, Kolkata – 700001

No. Labr/ 104 / (LC-IR)/ 22015(16)/13/2023

Date : 21-01-2025

ORDER

WHEREAS an industrial dispute existed between M/s. Themis Medicare Limited, having its Head Office at 11/12, Udyognagar, S.V. Road, Goregaon (W), Mumbai- 400104 and its Regional Office at M/s. Shikha Distributor Pvt. Ltd., 2nd Floor, 6/6, Kusthia Road, Kolkata – 700039 and their workman Subir Kumar Chatterjee, S/o Late Badal Chatterjee, 55, J.K. Street, Uttarpara, Hooghly, Pincode – 712258, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);


AND WHEREAS the 7th Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 30.12.2024 in Case No. - 04 of 2021 on the said Industrial Dispute Vide e-mail dated 13.01.2025 in compliance of u/s 10(2A) of the I.D. Act, 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,


Assistant Secretary


to the Government of West Bengal

No. Labr/ 104 /1(5)/(LC-IR)/ 22015(16)/13/2023

Date : 21-01-2025

Copy with a copy of the Award forwarded for information and necessary action to :-

1. M/s. Themis Medicare Limited, having its Head Office at 11/12, Udyognagar, S.V. Road, Goregaon (W), Mumbai- 400104 and its Regional Office at M/s. Shikha Distributor Pvt. Ltd., 2nd Floor, 6/6, Kusthia Road, Kolkata – 700039.
2. Subir Kumar Chatterjee, S/o Late Badal Chatterjee, 55, J.K. Street, Uttarpara, Hooghly, Pincode – 712258.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Assistant Secretary

No. Labr/ 104 /2(3)/(LC-IR)/ 22015(16)/13/2023

Date : 21-01-2025

Copy forwarded for information to :-

1. The Judge, 7th Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata – 700001 with respect to his e-mail dated 13.01.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.
3. Office Copy.


Assistant Secretary

IN THE SEVENTH INDUSTRIAL TRIBUNAL, WEST BENGAL

Present: Ms. Yogita Gaurisaria , Judge, Seventh Industrial Tribunal.

Case No. 04 of 2021

Under Section 2A(2) of the Industrial Disputes Act, 1947

**SUBIR KUMAR CHATTERJEE , S/o Late Badal Chatterjee residing
at 55, J.K. Street, Uttarpara, Hooghly, Pincode – 712258**

.....Applicant

-VS-

**M/s. Themis Medicare Limited, having its Head Office at 11/12,
Udyognagar, S.V. Road, Goregaon (W), Mumbai- 400104 and its
Regional Office at M/s. Shikha Distributor Pvt. Ltd., 2nd Floor, 6/6,
Kusthia Road, Kolkata – 700 039**

.....Opposite Party/Company

This Award delivered on Monday, this the 30th day of December, 2024

A W A R D

The instant case has been initiated by the applicant Subir Kumar Chatterjee (hereinafter referred to as the applicant) by filing the application under Section 2A(2) of the Industrial Disputes Act, 1947 against his employer M/s. Themis Medicare Limited (herein referred as O.P/Company) in connection with the illegal termination of his service vide letter dated 10.06.2020 with the prayer to pass an award of his reinstatement with full back wages from the date of illegal retrenchment along with all consequential service benefits and interest setting aside the order of his illegal retrenchment.

The case of the applicant in a nutshell is that the applicant joined the Company with effect from 1st July, 2003 as Senior Medical Representative at Uttarpa Head Quarter vide letter of appointment (Exhibit-1) and his service was confirmed vide letter dated 29.07.2004 with effect from 01.07.2004. His confirmation in service only brought about some marginal changes in pay structure and other conditions of appointment remained the same as per letter dated 13.08.2003. He used to discharge his duties quite diligently and sincerely. The applicant rendered seventeen years of spotless service tenure before being illegally retrenched on 10.06.2020 vide letter dated 10.06.2020.

He further stated that he submitted representation to the OP/ company dated 24th June, 2020 urging the company to review the order of termination which has been an illegal retrenchment. The OP/company in reverse mail informed the applicant/ workman that they would not reconsider the order of termination of service of the applicant/ workman.

He further stated that against his illegal retrenchment, he raised an industrial dispute by filing complaint petition dated 22nd July, 2020 before the District Labour Commissioner, Hooghly pleading necessary intervention of the conciliatory authority with regard to illegal retrenchment of the workman and notice for submitting written statement was sent to the company on 13th November, 2020. There was no result of such conciliation process. He filed the instant application after the expiry of the statutory period as per the relevant provision as prescribed in the Industrial Dispute Act, 1947.

He further stated that the company retrenched his service without following the statutory provision of the prescribed condition precedent of retrenchment as provided under the said Act and the retrenchment is illegal and that since his

retrenchment with effect from 10.06.2020, he has not been in any gainful employment elsewhere till date. He prayed before this Tribunal that the order of illegal retrenchment be set aside and the company be directed to reinstate him , to save him from reeling under extreme privation, with full back wages and all other consequential benefits as payable to him by the company from the date of illegal retrenchment to the date of reinstatement together with interest as admissible. Hence, this case.

It appears from the order dated 22.09.2022 that the OP/Company appeared and filed Vakalatnama. But later, the OP/Company chose not to appear before this Tribunal and accordingly, the instant case proceeded exparte against the OP/Company.

On 05.07.2023, the applicant/ Workman filed his Affidavit in Chief .

The applicant/ workman was examined as P.W.1 and some photocopies of documents have been marked as Exhibits 1 to 7. They are as follows-

1. Photocopy of appointment letter appointing w.e.f. 01.07.2003 marked as Exbt. 1.
2. Photocopy of confirmation letter dated 29.07.2004 marked as Exbt. 2.
3. Photocopy of forwarding letter of conformation dated 09.08.2004 marked as Exbt. 3.
4. Photocopy of termination letter by the company dated 10.06.2020 is marked as Exbt. 4.
5. Photocopy of the letter dated 24.06.2020 by the applicant to the OP/Company marked as Exbt. 5.
6. Printout copy of the email sent by the OP/Company to the applicant/ workman in reply to his letter dated 24.06.2020 as Exbt. 6.

7. Photocopy of the complaint petition dated 22.07.2020 addressed to the Hooghly District Labour Commissioner marked as Exhibit 7.

Heard the Ld. Advocate for the applicant/ workman. The Ld. Advocate for the applicant submitted that the applicant is a workman within the definition of workman under section 2(s) of the Industrial Disputes Act, 1947 read with the West Bengal Amendment Act 33 of 1986 (with effect from 21.08.1984) and West Bengal Act 57 of 1980 (with effect from 30.11.1981). The Ld. Advocate for the applicant/ workman submitted that the Sales Promotion employees are also within definition of workman in view of West Bengal Amendment. The Ld. Advocate for the applicant/ workman further submitted that the termination of the applicant/ workman vide letter dated 10.06.2020 is nothing but retrenchment as defined under section 2(oo) of the Industrial Disputes Act, 1947 and does not fall within the exceptions as provided under section 2(oo) of the said Act and is illegal termination of the service of the applicant/ workman since the OP/Company did not comply the condition precedent to retrenchment as laid down under section 25F of the said Act, 1947 being compulsory obligation on the company and as such the said retrenchment is illegal retrenchment. The Ld. Advocate for the applicant/ workman further submitted that the applicant/ workman has not been in any gainful employment elsewhere since his said illegal retrenchment and therefore is entitled to full back wages with reinstatement with all consequential benefits including interest, costs and prayed for continuity of service.

The Ld. Advocate for the applicant/ workman relied on the following citations in support of his case-

1. Narottam Chopra - VS - P.O. Labour Court 1989 Supp (2) SCC 97

2. Ajay Pal Singh – Vs- Haryana Warehousing Corporation (2015) 6 SCC 321
3. Raj Kumar – vs - Director of Education (2016) 6 SCC 541
4. Ramesh Kumar – vs - State of Haryana 2010(1) CLJ SC 195
5. Devinder Singh –vs- Municipal Council (2011) 3 CLJ SC 58
6. Deepali Gundu Surwasu – vs- K.J.A. Mahavidyalaya (D.Ed.) & Ors
(2013) 10 SCC 324
7. Hari Nandan Prasad – vs – Employer I/ R to Management of FCI & Anr
(2014) 7 SCC 190
8. BSNL – vs – Burumal 2014 Lab I.C. 1093
9. Anoop Sharma – vs – Public Health Division Haryana (2010) 5 SCC 497
10. Harjinder Singh – vs – Punjab State Warehousing Corpn 2010 (1) CLJ (SC)
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Perused the case record alongwith the documents and the evidences, both oral and documentary.

The evidence of the applicant/ workman remained uncontroverted.

In light of the aforesaid contentions as well as uncontroverted evidences of the applicant/ workman brought in support thereof by the applicant/ workman, I find that the applicant/ workman falls within the definition of workman as laid under section 2(s) of the Industrial Disputes Act, 1947 read with the West Bengal Amendment Act 33 of 1986 (with effect from 21.08.1984) and West Bengal Act 57 of 1980 (with effect from 30.11.1981). The applicant categorically averred in his application that his primary and essential duty, as will also reflect from the appointment letter- terms & conditions, was to promote sales of the

Pharmaceutical products of the Company. He also deposed the same in his Affidavit-in-chief. The Exhibit-1 (terms & conditions therein) fortifies that the nature of job performed by the applicant was of Sales Promotion employee. The Sales Promotion employees are also within the definition of workman in view of West Bengal Amendment.

I further find that the OP/Company terminated the services of the applicant/ workman by letter dated 10.06.2020 (Exhibit-4) by paying an amount of Rs. 10,036/- vide cheque no. 001626 dated 01.06.2020 as salary for June, 2020. The OP/Company cited the reason as under-

“We regret to inform you that, in view of the business losses incurred by us due to the prevailing pandemic situation in the country, its enormity and uncertainty, we have decided to take the painful decision of reducing our field staff effective from 10th June, 2020.

Therefore, under clause 2(b) of your appointment letter, you will cease to be in the employment of the company from June 10th, 2020. Your salary cheque for the month of June, 2020 is enclosed in lieu of notice.....”

The termination of services of the applicant/ workman vide letter dated 10.06.2020 falls within the definition of retrenchment as laid under section 2(oo) of the said Act, 1947 and does not fall within the exceptions as provided under section 2(oo) of the said Act and is illegal termination of the service of the applicant/ workman since the OP/Company did not comply with the statutory conditions precedent to retrenchment as laid down under section 25F and/or 25N of the said Act, 1947 being compulsory obligation on the company and the said retrenchment is illegal retrenchment.

The applicant/ workman has averred and deposed that the applicant/ workman has not been in any gainful employment elsewhere since his said illegal retrenchment and is entitled to full back wages with reinstatement with consequential benefits and prayed for continuity of service. The same also remains unchallenged and uncontroverted.

In view of the aforesaid facts and circumstances and the settled position of the law and unchallenged and uncontroverted evidence of the applicant/ workman, this Tribunal finds that the applicant/ workman has been able to prove his case by cogent and consistent evidence that his alleged termination vide letter dated 10.06.2020 is bad, illegal and unjustified and is liable to be set aside and that the applicant/Workman is entitled to reinstatement with full back wages and consequential reliefs and the services of the applicant/ workman be deemed to be continuous service without any break.

Hence, it is

ORDERED

that the instant case being No. 04/2021 u/s. 2A(2) of the Industrial Disputes Act, 1947 be and the same is allowed exparte with costs of Rs. 1 Lac (Rupees One Lac only) against the OP/Company. The letter of termination dated 10.06.2020 (Exhibit-4) is set aside being bad, illegal and unjustified.

The OP/Company is directed to reinstate the applicant/ workman in service with full back wages alongwith all other consequential benefits thereto arising out of such reinstatement and continuity of service and the service of the applicant/ workman shall be deemed to be continuous service without any break.

The OP/Company is also directed to further pay a sum of Rs. 2 Lacs (Rupees Two Lacs) as compensation to the applicant/ workman for the applicant's mental agony and unnecessary harassment arising out of this litigation.

The OP/Company is also directed to pay all the dues and outstanding as directed by this Tribunal with interest @ 10% per annum within thirty days from the date of this order.

The OP/Company is directed that while calculating the arrears payments and all other consequential benefits thereto and while fixing the present pay of the applicant/ workman, the applicant/ workman shall not be deprived from any such benefits which are paid to the similar workman or equally circumstance workman as per their service is concerned.

The aforesaid is the Award of this Tribunal passed in this instant case no. 04/2021/ 2A(2).

The case no. 04/2021/ 2A(2) stands disposed of ex parte.

Let copy of this Award be sent to the appropriate authority(ies) as envisaged under the law.

Dictated & corrected by me.

Judge

(Yogita Gaurisaria)
Judge
7th Industrial Tribunal
Kolkata
30.12.2024